

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH  
THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Department of Education  
DIVISION Public School Finance & Administrative Support  
DIVISION DIRECTOR Patricia Martin  
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INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire & financial impact statement attached to the front of two (2) copies of your proposed rule and required documents. Mail or deliver to:

Donna K. Davis  
Subcommittee on Administrative Rules and Regulations  
Arkansas Legislative Council  
Bureau of Legislative Research  
Room 315, State Capitol  
Little Rock, AR 72201

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1. What is the short title of this rule? **Rules Governing the Acquisition of Energy Conservation Measures.**
2. What is the subject of the proposed rule? **How to use energy savings contracts and short-term debt instruments to acquire energy conservation measures**
3. Is this rule required to comply with federal statute or regulations? Yes \_\_\_\_\_ No **X**  
If yes, please provide the federal regulation and/or statute citation.
4. Was this rule filed under the emergency provisions of the Administrative Procedures Act?  
Yes \_\_\_\_\_ No **X**  
If yes, what is the effective date of the emergency rule?  
  
When does the emergency rule expire?  
  
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes \_\_\_\_\_ No **X**
5. Is this a new rule? Yes **X** No \_\_\_\_\_ If yes, please provide a brief summary explaining the regulation. Rule establishes how school districts acquire energy conservation measures using energy savings contracts and short-term debt instruments.

Does this repeal an existing rule? Yes \_\_\_\_\_ No X If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes \_\_\_\_\_ No X If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes. **NOTE: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law grants the authority for this proposed rule. If codified, please give Arkansas Code citation.  
**Ark. Code Ann. § 6-20-402 and 6-20-405 and Act 58 of the Second Extraordinary Session of 2003.**
7. What is the purpose of this proposed rule? Why is it necessary? **The purpose of these rules is to establish how school districts acquire energy conservation measures using energy savings contracts and short-term debt instruments.**
8. Will a public hearing be held on this proposed rule? Yes X No \_\_\_\_\_  
If yes, please complete the following:  
  
Date: **May 13, 2004**  
Time: **10 AM to 12 Noon**  
Place: **ADE Auditorium – Little Rock, AR**
9. When does the public comment period expire for permanent promulgation? (Must provide a date.)  
**May 13, 2004**
10. What is the proposed effective date of this proposed rule? (Must provide a date.)  
**July 1, 2004**
11. Do you expect this rule to be controversial? Yes \_\_\_\_\_ No X  
If yes, please explain.
12. Please give the names of persons, groups, or organizations that you expect to comment on these rules. Please provide their position (for or against) if known.
  - **Arkansas Association of Educational Administrators**
  - **Arkansas School Boards Association**
  - **Arkansas Association of School Business Officials**
  - **Arkansas Education Association**
  - **Arkansas Education Service Cooperatives**

## SUMMARY

This is a new rule that sets the process and procedure for districts to acquire and energy savings contract and to finance the contract. It allows districts to use short term debt for these purchases.

## FINANCIAL IMPACT STATEMENT

DEPARTMENT Education  
DIVISION Public School Finance  
PERSON COMPLETING THIS STATEMENT Patricia Martin  
TELEPHONE NO. 682-5124 FAX NO. 682-9035 EMAIL pmartin@arkedu.k12.ar

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

### SHORT TITLE OF THIS RULE

#### **Rules Governing the Acquisition of Energy Conservation Measures.**

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?      Yes \_\_\_\_\_      No x \_\_\_\_\_
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

#### **Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

#### **Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation and explain how they are affected.

#### **Current Fiscal Year**

\$ \_\_\_\_\_

#### **Next Fiscal Year**

\$ \_\_\_\_\_

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

#### **Current Fiscal Year**

\$ \_\_\_\_\_

#### **Next Fiscal Year**

\$ \_\_\_\_\_

DEPARTMENT OF EDUCATION  
FISCAL IMPACT STATEMENT OF PROPOSED REGULATION  
(In compliance with Acts 884 and 1253 of 1995)

Regulation Title:       **Rules Governing the Acquisition of Energy Conservation Measures.**

Summary Description of Regulatory Proposal: **How to use energy savings contracts and short-term debt instruments to acquire energy conservation measures**

Cite Statutory Authority for this Regulatory Proposal: **Ark. Code Ann. § 6-20-402 and 6-20-405 and Act 58 of the Second Extraordinary Session of 2003.**

I.       Fiscal Impact on the Department: (include whether impacts are non-recurring or recurring) there is no impact on the Department

- A.       Resources Required - Personnel, equipment, office space.
- B.       Time Required for Implementation.
- C.       Procedural Changes.
- D.       Other.

II.       Fiscal Impact on Local School District or Others? (Include whether impacts are non-recurring or recurring)

There is no cost to the local school districts or others. There could be a savings from use of short term debt.

- A.       Resources Required - Personnel, equipment, office space.
- B.       Time Required for Implementation.
- C.       Procedural Changes.
- D.       Other.

III.       Additional Comments.

Prepared by: (Name) Patty Martin  
                  (Title) Assistant Director  
                  (Date) April 8, 2004

**ARKANSAS DEPARTMENT OF EDUCATION  
PROPOSED RULES GOVERNING THE ACQUISITION OF  
ENERGY CONSERVATION MEASURES**

**1.00 Authority**

- 1.01 The Arkansas State Board of Education's authority for promulgating these rules is pursuant to Ark. Code Ann. § 6-11-105, Ark. Code Ann. § 6-20-402 and 6-20-405 and Act 58 of the Second Extraordinary Session of 2003.
- 1.02 These rules shall be known as the Arkansas Department of Education Rules Governing the Acquisition of Energy Conservation Measures.

**2.00 Purpose**

- 2.01 The purpose of these rules is to establish how school districts acquire energy conservation measures using energy savings contracts and short-term debt instruments.

**3.00 Definitions** – For purposes of these rules, the following terms mean:

- 3.01 "Energy conservation measure" - any improvement, repair, alteration, or betterment of any building or facility owned or operated by a school district or any equipment, fixture, or furnishing to be added to or used in any building or facility that is designed to reduce energy consumption or operating costs and may include, without limitation, one (1) or more of the following:
  - 3.01.01 Insulation of the building structure or systems within the building;
  - 3.01.02 Storm windows or doors, caulking or weather stripping, multi-glazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;
  - 3.01.03 Automated or computerized energy control systems;
  - 3.01.04 Heating, ventilating, or air conditioning system modifications or replacements;
  - 3.01.05 Replacements or modifications of lighting fixtures to increase the energy efficiency of the lighting system;
  - 3.01.06 Indoor air quality improvements to increase air quality that conform to the applicable state or local building code requirements even in lieu of an increase in energy usage;
  - 3.01.07 Any additional building infrastructure improvements, cost savings, and life safety or other safety or conservation measures that

provide long-term operating cost reductions and are in compliance with state and local codes; and

3.01.08 Building operation programs that reduce operating costs.

3.02 "Energy savings contract" - a contract for the implementation of one (1) or more energy conservation measures as defined in § 6-20-401 and shall include a pre-installation energy audit or analysis.

3.02.01 The contract may provide that all payments except obligations on termination of the contract before its expiration are to be made over time and that the energy cost savings are guaranteed to the extent necessary to pay the costs of the energy conservation measures.

3.02.02 The energy conservation measures to be performed under the contract may be paid for with either revenue or non-revenue receipts of a school district or, alternatively, financed by the issuance of postdated warrants or entering into installment contracts or lease-purchase agreement.

3.03 "Qualified provider" - business that possesses a valid Arkansas contractor's license and that is experienced in the analysis, design, implementation, and installation of energy efficiency and facility improvement measures, and who has demonstrated the ability to secure necessary financial measures to support energy savings guarantees, the technical capabilities to ensure such measures generate energy cost savings, and the ability to provide maintenance and ongoing measurement of these measures to ensure and verify energy savings.

#### **4.00 Process And Procedure For Acquiring Energy Conservation Measures**

4.01 A school district may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the proposal would not exceed the amount to be saved in either energy or operational costs, or both, within a fifteen-year period from the date of installation, if the recommendations in the proposal are followed.

4.02 A school district's purchase or installation or both of energy conservation measures under § 6-20-405 may be financed by the school district over a fifteen-year period after the execution by the school district of the postdated warrants, lease-purchase agreement, or installment contract.

4.03 The energy conservation measures to be performed under the contract may be paid for with either revenue or non-revenue receipts of a school district or, alternatively, financed by the issuance of postdated warrants or entering into installment contracts or lease-purchase agreements.

- 4.04 Postdated warrants, lease-purchase agreements, and installment contracts must be registered on forms provided by the State Board of Education with the treasurer of the district and the board.
- 4.05 A copy of any guaranteed energy savings contract that is executed in connection with the acquisition, installation, or construction of energy conservation measures under this section shall be filed with the Department of Education.
- 4.06 Obligations incurred pursuant to a guaranteed energy savings contract are not included in computing a district's debt ratio.
- 4.07 The district may select the qualified provider or providers best qualified and capable of performing the desired work and negotiate an energy savings contract for the project.
- 4.08 The qualified provider shall reimburse the school district for any shortfall of guaranteed energy savings projected in the project.
- 4.09 The qualified provider's proposal shall include:
  - 4.09.01 The estimates of all costs of installation, modifications, or remodeling, including, without limitation, costs of a pre-installation energy audit or analysis, design, engineering, installation, maintenance, repairs, debt service, post-installation project monitoring, and data collection and reporting, as well as whether energy consumed or the operating costs, or both, will be reduced;
  - 4.09.02 The qualifications of the provider; and
  - 4.09.03 Certification that all energy-consuming products utilized in the projects will be certified with the appropriate standards by the Air Conditioning and Refrigeration Institute.